



**Queensland University of Technology**  
Brisbane Australia

This is the author's version of a work that was submitted/accepted for publication in the following source:

O'Brien, Erin (2010) Dark numbers: challenges in measuring human trafficking. *Dialogue E-Journal*, 7(2).

This file was downloaded from: <http://eprints.qut.edu.au/48257/>

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# Dark Numbers: Challenges in measuring human trafficking

Erin O'Brien

## Abstract

Over the last decade nations around the world have renewed their efforts to address the problem of human trafficking, following the introduction of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. In Australia and the United States, legislators sought to quantify and characterise the human trafficking phenomenon, seeking to answer the question — how large is the problem of trafficking? This article explores the attempts of legislators in Australia and the United States to determine how many victims are trafficked into their countries, highlighting the significant uncertainty that still surrounds data on human trafficking. The challenges researchers face in measuring human trafficking are also explored. These challenges include disputes over the definition of a trafficking victim, the limitations of research using sampling to measure the trafficked population, and the mischaracterisation of the trafficking problem as a result of politicisation of the trafficking debate and a focus on trafficking for sexual exploitation versus other forms of labour. This article argues that in the absence of reliable data on trafficking, policy is often informed by misleading or false information.

## Introduction

In 2000 the United Nations adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, sparking renewed efforts by nations to explore and address the human trafficking phenomenon within their borders. In Australia these efforts initially took the form of an *Australian Crime Commission Joint Parliamentary Inquiry into the Trafficking of Women for Sexual Servitude* in 2003 and 2004 leading to the passage of the *Criminal Code Amendment Act 2005*. In the United States, congressional hearings held between 1999 and 2004 contributed to the development of the *Trafficking Victims Protection Act 2000* and subsequent Reauthorization Acts.

Throughout the Parliamentary Inquiry and Congressional hearings, legislators struggled to answer a key question — how large is the human trafficking problem? Disputes over the number of victims plagued efforts to formulate a consistent estimate of the trafficking problem at the time, and continue to perplex researchers and legislators.

This article explores the attempts of legislators in Australia and the United States to establish a credible estimate of the size of the human trafficking problem, specifically within their own nations, drawing upon records of the Parliamentary and Congressional hearings identified above, as well as interviews conducted with key witnesses from these hearings, representatives of organisations with an ongoing interest in human trafficking, and government officials.

Firstly, this article outlines the estimates that were offered to legislators during the Australian Parliamentary Inquiry and Congressional hearings, charting changes in estimates over time and highlighting the figures that have been adopted for use in



government studies and reports. Secondly, the article explores the challenges researchers contend with when attempting to provide consistent and comparable data on the scope of the human trafficking problem as a result of differing definitions. The definitional disputes explored here include the differentiation between a ‘smuggled’ and a ‘trafficked’ person, and the ambiguity in the definition of a trafficking victim contained within the *United Nations’ Trafficking Protocol 2000*. Thirdly this article outlines the limitations researchers face in attempting to sample the trafficking population in order to estimate the size of the problem. Lastly, the ways in which the phenomenon of human trafficking can become mischaracterised through the politicisation of the data collection process and a focus on trafficking for sexual exploitation for other forms of forced labour is considered.

This article concludes by arguing that a perpetuation of false statistics is a damaging consequence of the persistent ambiguity surrounding human trafficking data. This leads to policy that is often informed by unreliable information and can result in damaging policies that harm migrant women and fail to address the entirety of the human trafficking problem.

### ***Estimating the scope of the problem***

The scope of the problem of human trafficking is consistently disputed amongst government departments, non-government organisations and international agencies. The United Nations Office on Drugs and Crime, tasked with monitoring the world’s response to human trafficking, declared in the 2009 *Global Report on Trafficking in Persons* that the magnitude of the problem of trafficking on the international scale is still ‘one of the key unanswered questions’ (UNODC 2009, 12). The International Labor Office has also reported difficulties in establishing a robust estimate on the number of trafficking victims (ILO 2006, 16). Despite persistent ambiguity in the estimates of the number of trafficking victims worldwide, witnesses to the Australian Inquiry and US Congressional hearings attempted to quantify the problem.

### ***Australian estimates***

During the *Australian Parliamentary Inquiry into the Trafficking of Women for Sexual Servitude* several organisations made an effort to identify how many trafficking victims were brought to Australia annually. Project Respect first identified an estimate of up to 1,000 trafficking victims in Australia. Despite arguing that there was a need for greater research and indicating that it was the role of the Australian Federal Police, and not Project Respect, to offer a national estimate on the problem, Project Respect Director Kathleen Maltzahn declared that, ‘we think that 1,000 women at any one time is a reasonable number’ (*APJC* 18 November 2003, 38)<sup>1</sup>. She also indicated that a

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<sup>1</sup> Australian Parliamentary Joint Committee references will be abbreviated to *APJC* (to indicate a hearing of the Australian Parliamentary Joint Committee), *APJC Submission* (to indicate a Submission to the Parliamentary Joint Committee), or *APJC Report* (to indicate the final report of the Parliamentary Joint Committee).



contact of the organization, police officer Paul Holmes, had suggested that he would be surprised if the number was as low as 1,000 (*APJC* 18 November 2003, 39).

The Scarlet Alliance and Sex Workers Outreach Project offered a competing estimate on the scope of the problem in Australia, drawing on evidence from ‘organisations in every state outreaching to virtually every workplace that advertises, which is the majority of the sex industry’ (*APJC* 25 February 2004, 19). Their submission reported an estimation that ‘there are less than 400 sex workers entering Australia in any one year on a contract, the majority of whom knowingly consent to the work’ (*APJC Submission* 27, 2003). They argued that while it is difficult to know the exact number of trafficked women, they estimated that of the approximately 300 to 400 women who enter Australia each year;

our organisations know of only 10 individual cases over the last 10 months to two years where the women themselves have indicated that they were deceptively recruited, they did not know they were going to work in the sex industry, or the conditions of their employment varied to such an extent that they were very unhappy with the circumstances and attempted to leave the workplace.

(*APJC* 25 February 2004, 19).

In addition to compiling this estimate from the Alliance’s outreach networks, they also drew upon Department of Immigration and Multicultural Affairs figures from 1996-1997 reporting a detection of a total of 21 sex workers operating illegally. It is unknown how many of these women experienced coercion or deception associated with their arrival into Australia and subsequent work in the sex industry. The Scarlet Alliance commented that the figure of 21, ‘Hardly represents a problem of the scale the community might imagine’ (*APJC Submission* 27, 2003).

Other witnesses challenged the Scarlet Alliance’s estimate that trafficking victims represented only a very small proportion of migrant women working in the sex industry. Detective Senior Sergeant McKinney declared, ‘I think we are naïve if we say there would not be 100 [trafficking victims] in Australia at any one time’ (*APJC* 25 February 2004, 37), though this estimate is obviously significantly lower than the 1,000 figure provided by Project Respect.

Government agencies demonstrated greater reluctance than non-government organisations (NGOs) when pressed to provide an estimate on the overall scope of the problem. Offering evidence in her role as the Sex Discrimination Commissioner for the Human Rights and Equal Opportunities Commission, Sally Moyle was willing to estimate that the majority of human trafficking worldwide was for the purposes of sexual exploitation, however she seemed reluctant to commit to definitive statistics, blaming the lack of agreement on the overall scope of the problem. ‘I think internationally the various percentages are 80 to 90 per cent for sexual exploitation of women and 20-odd per cent for labour exploitation that may engage men as well. Again, I do not think that is something anybody can really definitively decide’ (*APJC* 25 February 2004, 60). The Australian Federal Police were also reluctant to estimate



the scope of the problem. John Lawler, the Acting Deputy Commissioner at the time, declared that, ‘The AFP would prefer that the figures that we present to the committee are sustainable figures based on evidence and solid information. We have solid, sustainable evidence and information to support 14 victims that have come to notice for slavery and sexual servitude’ (*APJC* 26 February 2004, 4).

The final report of the Inquiry reflected the disagreement evident in the hearings regarding the scale of the overall problem. The Committee avoided declaring their own estimate of the size of the trafficking problem in Australia. However, the report did agree with the stance of Project Respect to some extent, quoting Kathleen Maltzahn and confirming her belief that, “‘It is a significant enough problem that we need to take it seriously. I do not think it is just a few aberrations that we are finding’” (Maltzahn in *APJC Report* 2004, ix). They also demonstrated some acceptance of the perspective of the Scarlet Alliance, noting that there is a distinction between women who had been trafficked using coercion or deception, and women who had come to Australia voluntarily to work. They also acknowledged that there were doubts about how large this first group actually was (*APJC Report* 2004, 10).

Overall, the committee indicated that there was a lack of consensus among the witnesses at the hearing about the scale of the actual problem and agreed that there are still enormous challenges in correctly quantifying the problem of trafficking. They indicated that, ‘Recognising these problems, the Committee is cautious in attempting any definitive conclusions in this respect’ (*APJC Report* 2004, 20). They resolved that the uncertainty regarding the overall scope of the problem and trends influencing trafficking had two outcomes: ‘this uncertainty underlines the continuing importance of the ACC’s [Australian Crime Commission’s] intelligence gathering and analysis role for informing the Australian government’s response to the problem’ and ‘this uncertainty also poses problems for Australian policy’ (*APJC Report* 2004, 22).

The magnitude of the problem in Australia still remains largely undefined, with recent reports continuing to rely on the range identified at the 2004 Parliamentary Inquiry. A report prepared for the Australian Parliament identifies the higher estimate of between 300 and 1,000 trafficking victims brought to Australia annually (Phillips 2008, 3). However, it also calls this figure into question, noting that between 1999 and 2005 only 133 cases of suspected trafficking were referred to the Australian Federal Police, with just 10 prosecutions taken forward by the Department of Public Prosecutions (Phillips 2008, 9; 14).

### ***United States estimates***

In the initial US Congressional hearings leading to the development of the *Trafficking Victims Protection Act 2000*, the figure most often cited as the number of trafficking victims brought into the United States each year was 50,000. Theresa Loar, Director of the President’s Inter-Agency Counsel on Women put forward that, ‘It is estimated that there are over 1 million women and children trafficked every year, over



50,000 into the United States' (*House* 14 September 1999, 14)<sup>2</sup>. This estimate of 50,000 was most likely drawn from research conducted by Amy O'Neill Richard on behalf of the State Department, in which she declared that, 'government and non-governmental experts in the field estimate that out of the 700,000 to two million women and children who are trafficked globally each year, 45,000 to 50,000 of those women and children are trafficked to the United States' (O'Neill Richard 1999, 3). Initially the 50,000 figure remained unscrutinised, though the worldwide estimate of 1 million was challenged by Dr Laura Lederer of the Protection Project. She testified that 'UNICEF is estimating that 1 million children are forced into prostitution in South-East Asia alone and another million worldwide' (*House* 14 September 1999, 38).

This disparity was recognised by members of the Committee, with Representative Faleomavaega expressing disbelief that the State Department's figures differed so greatly from Lederer's, stating that, 'If they don't even have the accurate figures, how can they possibly declare a policy that is accurate and correct' (*House* 14 September 1999, 47-48). Despite this questioning, the figure of 50,000 trafficking victims brought into the US each year remained unchallenged, and was repeated by Senator Brownback in a Senate hearing on trafficking in early 2000 (*Senate* 22 February 2000, 2). Although the estimate initially only referred to women and children trafficked into the US, it became the estimate quoted in the hearings in reference to all victims trafficked into the United States. At the Senate hearing in April of 2000, Paula Dobriansky, US State Department Under-Secretary retained the 50,000 figure, but relied on a slightly lower figure of 700,000 victims of trafficking worldwide each year. (*Senate* 4 April 2000, 22).

Over the next few years, however, the 50,000 figure has been progressively downgraded. In 2003 the then-Director of the Office to Monitor and Combat Trafficking in Persons (also known as the TIP Office) John Miller declared that, 'We now estimate that this modern-day slavery also includes 18,000 to 20,000 victims who enter the United States annually' (*House* 29 October 2003, 58). By 2004, the figure was downgraded even further, with Senator Russell D. Feingold telling a Senate hearing on trafficking that 'Estimates of the number of people trafficked in the United States each year range from 14,500 to 17,500' (*Senate* 7 July 2004, 5). This lower figure also appeared in a Department of Justice Report produced in early 2006 (Newman 2006, 5), though in that same year US Attorney General Alberto Gonzales reduced the estimate further, suggesting that government estimates of between 15,000 and 20,000 victims each year may have been too high (Washington Post 2007: A1).

Sister Dougherty, testifying on behalf of the United States Conference of Catholic Bishops (who sub-contracted much of the US Government's funding for support for victims of trafficking) bemoaned the ongoing changes in the estimates of the scope of the trafficking problem:

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<sup>2</sup> References from United States Congressional hearings will be abbreviated as either *House* (to indicate a Congressional Hearing in the US House of Representatives) or *Senate* (to indicate a Congressional Hearing in the US Senate).





It is interesting to me that in 1999, the study that was put out by the State Department — I think it was commissioned by the CIA of Amy O'Neill Richard as an independent researcher — that study that was behind the passing of the law said 50,000 people. And 2 years later, we drop from 50,000 people to 20,000 people, and now we have dropped from 20,000 people to 17,000 people being trafficked into the United States.

(Senate 7 July 2004, p.30).

While Sister Dougherty believed that the numbers were being underestimated, even these downgraded estimates have been challenged due to the relatively small numbers of victims identified over the last decade. Feingold argues that 'even with a well-trained law enforcement and prosecutorial system, less than 500 people have been awarded T visas, the special visas given to victims in return for cooperation with federal prosecutors' (Feingold 2005: 30). This demonstrates that either prosecutions are failing to stop traffickers, or that the scale of the problem is not as large as first estimated. Only 1,362 victims have been identified between 2000 and 2007 (*Washington Post* 2007: A1). This substantial disparity between the estimated and identified number of victims was so stark that the Bush administration hired a public relations firm, Ketchum, to assist in the effort to 'find' victims. (*Washington Post* 2007: A1).

### ***Challenges in measuring human trafficking***

In both Australia and the United States, the process of determining the scale of the trafficking problem has been fraught with inconsistencies, competing claims and unproven estimates. The ambiguity surrounding estimates of the trafficking problem is caused by many challenges researchers face in attempting to measure this phenomenon. These challenges include differing definitions of a trafficking victim, limitations in the identification of victims and sampling selections for studies, and a narrow focus on trafficking that skews the data towards an over-representation of sexual exploitation.

#### ***- Definitions***

It is extremely difficult to build a comprehensive picture of human trafficking worldwide due to inconsistent definitions. The way in which each nation defines the crime of trafficking and characterises trafficking victims has a direct impact on the collection of data about the crime, undermines the comparability of international data (Aromaa 2007, 20), and calls into question the reliability of statistics available concerning trends in human trafficking. The UNODC identifies definitional disputes as problematic for measuring trafficking due to the resulting differences in legislation. The definition of a trafficking victim informs the legislation adopted by each nation, and can have a substantial effect on the way in which data is collected in each country. The UNODC believes that as a result of differing legislation, it is difficult to find comparable research on human trafficking because the data is 'clearly affected by the existence, scope and moment of entry into force of such legislation' (UNODC 2009:



18). In addition to differing national definitions, two key definitional disputes greatly undermine the validity and comparability of trafficking data — the dispute over the difference between smuggling and trafficking, and the dispute over the meaning of the term ‘exploitation of prostitution of others’.

### *Smuggling versus trafficking*

Being able to distinguish between a person whose illegal entry into another country has been facilitated by a third party (typically referred to as a smuggled person), and those who have been transported forcibly or faced with exploitative and coercive conditions in return for their transport (typically referred to as a trafficked person) (Laczko 2007, 40) is a problem that plagues law enforcement officials, prosecutors, policy-makers and researchers. Kelly (2002, 14) argues that legal definitions create unhelpful distinctions when a realistic picture indicates more overlap. ‘The boundaries between help, facilitation, smuggling, trafficking and exploitation are not as clear as many conceptualisations imply’ (Kelly 2002, 14). Research for the International Office for Migration (IOM) describes the exploitation of migrant labour as a ‘continuum of experiences rather than a simple either/or dichotomy’ (Anderson and O’Connell Davidson 2003, 9). National definitions describing ‘trafficking victims’ occupy many different stages along this continuum with definitions often based on the severity or type of exploitation experienced by migrant workers. The IOM research suggests that ‘The precise point along this continuum at which tolerable forms of labour migration end and trafficking begins will vary according to our political and moral values’ (Anderson and O’Connell Davidson 2003, 9). The differentiation between trafficked and smuggled people is further complicated by disputes over the consent of the trafficking victim. Carrington and Hearn (2003) warn against the exclusion from the trafficking definition of migrant women who have consented to working in the sex industry in Australia as, ‘many women who believe they are migrating (legally or illegally) to work in the sex industry nevertheless find themselves victims of sexual servitude and slavery and other forms of exploitation such as debt bondage’ (Carrington and Hearn 2003, 7).

In Australia, the Parliamentary Inquiry Committee Members certainly showed a wish to understand whether estimates on the scale of the problem were operating under a definition that included all smuggling victims, or only those who, under Laczko’s definition, could be more accurately defined as trafficking victims due to the use of coercion and deception in the circumstances of their arrival in the destination country. Committee member Sercombe asked Project Respect, ‘You are not including in the estimate women who may be here on, say, a student visa or a fraudulently obtained visitors’ visa who have not been deceived? Or are you including all women?’ (APJC 18 November 2003, 39). Maltzahn declared that the estimate covered women under the UN definition who ‘have been either deceived about the conditions or subjected to threat, violence et cetera. If women are just in the sex industry and they have breached their visa conditions, we really do not care’ (APJC 18 November 2003, 39).





The Chair of the Committee, in discussing the scope of the problem with the Australian Federal Police representative, stated,

I think the Scarlet Alliance were suggesting that the number of people they had dealt with was a figure closer to yours, while Project Respect were saying that they thought it was several hundred. It was interesting that HREOC [Human Rights and Equal Opportunities Commission] thought that the two were just debating the parameters of the question in terms of the contract and whether they knowingly went into a contract understanding that it was for sexual prostitution or whether they were led to believe they were going into restaurants or bars where choice would be exercised. Your 14 [identified victims] would be where there is clear evidence they were misled about the nature of the contract, so I think that is part of definitional terms.

(APJC 26 February 2004, 5).

This implicit definition from the Committee members of the Inquiry of a trafficking victim as only one who has been deceived is distinct to many of the approaches of campaigners in the United States, who argue that all migrant women who are in the sex industry could fit the United Nations definition of trafficking for the purposes of sexual exploitation. In Australia, this was also evident with some organisations widening their definition of trafficking victim. The Australian Chapter of the International Commission of Jurists argued that,

the particular vulnerability of women and girls in developing countries to offers of employment in rich countries like Australia means that agreements to procure their services in the entertainment or sex industry can seldom be considered as agreements entered into by equals. Rather, they are frequently the result of coercion or deception, or even of sheer desperation.

(APJC Submission 8, 2003, 3).

This submission subscribes to the view that all migrant sex workers are vulnerable by their nature, and therefore under some form of coercion regardless of the individual circumstances of their arrival and work in Australia.

In the United States, however, Congressional representatives did not demonstrate the same degree of interest in clarifying whether or not estimates incorporated only those who had experienced force, fraud or coercion, or those who could be, according to Laczko's definition, more accurately described as a 'smuggled person'. Congressman Chris Smith, a leader in the creation of the *Trafficking Victims Protection Act 2000*, did recognize that there was some confusion about the definition of a trafficking victim in regard to research from Europe, stating, 'it is unclear how many of those are by force or some form of coercion are there' (*House* 29 October 2003, 105). However, Smith saw this lack of clarity only as a problem for the researchers, and not a limitation on using the data to inform policy.

Many other countries still do not attempt to differentiate between a smuggled person and a trafficking victim when collecting data on illegal immigration. Laczko



reports that, 'In many countries it is still common to mingle data relating to trafficking, smuggling and irregular migration' (Laczko 2007, 40). This makes it very difficult to compile accurate, comparable data that can be used to support an estimate of the trafficking problem worldwide, or to measure the progress of individual nations in dealing with the problem.

*'Exploitation of prostitution of others'*

An additional challenge in establishing uniform definitions to compare trafficking data comes from the ambiguity contained within the UN Trafficking Protocol itself regarding the trafficking of people for prostitution. This is not a problem that is encountered when defining trafficking for other forms of labour. Fergus (2005) notes that 'whilst "forced labour, slavery and servitude" are defined in international law, the phrase "exploitation of the prostitution of others or other forms of sexual exploitation" is not. As a result, there is much debate as to the interpretation of this last phrase.' (Fergus 2005: 5). Sullivan (2003) argues that this definition within the UN Protocol causes great confusion:

On the one hand, the Protocol would appear to penalize all third parties who use force to obtain labour, including sexual labour. On the other hand, the Protocol may also apply to non-forced or even overtly consensual activities that are seen to fall into the realm of "sexual exploitation". It is certainly not clear whether prostitution and other commercial sexual practices are always to be regarded as "exploitative".

(Sullivan 2003, 81).

This ambiguity in the definition arose as a result of strong disagreement during the Protocol negotiations over the legitimacy of prostitution. The term 'exploitation of prostitution of others' was intentionally left undefined in order to move on from a debate over prostitution that could have derailed the negotiations, and enable individual nations to choose how to address the issue of the legitimacy of prostitution (Gallagher 2001, 986).

Ongoing disputes about the definition of the 'exploitation of the prostitution of others' constrains research due to the confusion over and politicisation of this definition. Abolitionists argue that there should be no distinction between prostitution and trafficking (Raymond 2002, 492) while others argue that not all prostitution is exploitative and instead should be viewed as legitimate work (Kempadoo 1998, 5). The International Organization for Migration (IOM) has recognised that while the term 'exploitation of the prostitution of others' remains undefined in international law, 'This makes it virtually impossible to specify who has or has not been "trafficked" into the commercial sex trade without becoming embroiled in the more general debate about the rights and wrongs of prostitution — a debate which is both highly polarized and hugely emotive' (Anderson and O'Connell Davidson 2003, 7).

One of the results of this ambiguity is that the term 'trafficking victim' is often applied too willingly to individuals or groups who would not identify themselves as



such, or would not be identified as a trafficking victim according to many national definitions. In particular, some campaigners often group all migrant sex workers under the category of 'trafficking victims' because they do not recognise a distinction between 'free' and 'forced' sex work (Doezema 2002, 21). As a result, women working in the sex industry are not viewed as being at different points along the continuum discussed above, nor are they differentiated as either a 'smuggled' or 'trafficked' person. Abolitionists believe that by virtue of being a foreign worker in the sex industry, they automatically fit the definition of a trafficked person. This belief resonates with the point of view of the Australian Chapter of the International Commission of Jurists noted earlier, though is at odds with the perspective of organisations such as the Scarlet Alliance and Project Respect, who both draw a distinction between migrant women who experience coercion, intimidation and exploitation in the sex industry, and those who don't (*APJC* 18 November 2003, 39; *APJC* 25 February 2004, 19).

The conflation of smuggled and trafficked women has certainly been evident in the discussion of victims of trafficking in the Netherlands. Several abolitionist organisations such as the Coalition Against Trafficking in Women (Raymond interview 2008; Jeffreys interview 2008) and Equality Now (Kirkland interview 2008) argue that approximately 80 per cent of women have been trafficked into the Netherlands since the sex industry was decriminalised. The Dutch National Rapporteur reports that although the number of trafficking victims identified has risen in recent years, it certainly does not constitute 80 per cent of the sex industry (Dutch National Rapporteur 2007, 47). This difference in estimates most likely occurs as a result of a refusal by most abolitionists to distinguish between sex workers who have migrated, possibly illegally, from other countries, and women who have been transported to the Netherlands and forced into sex work through threats, intimidation and debt bondage.

In Australia, the Parliamentary Inquiry recognised that how the sex industry was perceived had an influence over the research. In the final report the Committee confirmed their belief that the differences in the statistics offered by organisations, particularly the Scarlet Alliance and Project Respect, were borne of differing definitions. They acknowledged, however, that the definitional differences emerged mostly as a result of the way in which the sex trade and migrant sex workers were viewed by those conducting the research. The final report declared that, 'Resolving these questions in many ways comes down to the fundamental question of the legitimacy of the sex trade' (*APJC Report* 2004, 22).

In the United States, the recognition of a dispute over the definition of the 'exploitation of prostitution' was less explicit. Representatives did acknowledge a competing view about the legitimacy of the sex industry (*House* 29 November 2001, 1), however this was not linked to discussions about the estimates being offered on the size of the trafficking problem.

#### **- Research limitations**



Definitional disputes are not the only factor that influences the validity of data on human trafficking. One of the key reasons researchers are unable to determine the scope of the trafficking problem lies in the limitations of research methods. There are significant limitations on the ability of researchers to produce reliable sampling data on human trafficking, and research is often misrepresentative as it is skewed towards political or institutional priorities.

Researchers find it very difficult to produce valid sampling data that is representative of the phenomenon of human trafficking due to the hidden nature of the crime. Di Nicola (2007) argues that trafficking victims belong to a 'hidden population' and believes that 'Statistically speaking, it is not possible to define a sampling frame for a hidden population' (Di Nicola 2007, 53). Although this challenge has not prevented attempts to calculate the scope of the problem and measure the influence of variables, it is clear that there are still dramatic limitations on the ability of researchers to produce reliable statistics. Due to this hidden nature, some researchers rely on prosecution data and samples drawn from those who have come into contact with the criminal justice system. In Australia and the United States information is collected on the number of visas granted for victims of trafficking, as well as the prosecutions that result from trafficking investigations. However, the UNODC believes that an over-reliance on criminal justice statistics typically results in under-reporting of the crime (UNODC 2009, 25). Many trafficking victims never come into contact with law enforcement. This is in part because they are often reluctant to report crimes or seek assistance due to 'the fear of retaliation by traffickers or deportation authorities' (Kangaspunta 2007, 30; Di Nicola 2007, 56; Dutch Rapporteur 2007, 5). Even if they do come into contact with law enforcement, often criminal justice statistics refer only to the number of prosecutions, or convictions, on trafficking offences, which excludes the number of trafficking victims who may have interacted with law enforcement on matters that did not lead to criminal charges. Prosecutions are often not forthcoming as potential witnesses are deported from the country before they can assist, or victims are unwilling to cooperate with law enforcement due to the lack of protection and support they are offered (Carrington and Hearn 2003, 3).

Researchers have also reported difficulties in obtaining truly representative statistics on the number of trafficking victims in each country due to the misleading categorisation of cases. Laczko (2007) and Kangaspunta (2007) believe that under-reporting occurs when crimes are not properly categorised as trafficking cases and are instead prosecuted as people smuggling or other crimes associated with trafficking. Laczko argues that, 'Here the problem is not so much a lack of data, but a failure to fully interpret and analyse statistics which may be relevant to understanding trafficking in persons' (Laczko 2007, 4).

Typically sampling is an effective way to extrapolate a small pool of data to predict the size and characteristics of a wider phenomenon. However, it is difficult to draw valid conclusions about human trafficking when, as shown above, it is very challenging to establish a reliable sample. It is also difficult to project the size of the wider population from samples that might be reliably constructed. In order to accurately predict the scope of the problem of trafficking, it is necessary for



researchers to determine the ratio between the total number of trafficking victims and the number of victims who come into contact with law enforcement or service providers (from whom samples are typically drawn). The Dutch National Rapporteur on Trafficking refers to this as the ‘dark number’ of cases that remain unreported (Dutch Rapporteur 2007, 5). Laczko (2007, 39) argues that this ratio remains unknown due to the hidden and illegal nature of the crime. Researchers are certainly aware that there is a substantial gulf between the estimates of the number of human trafficking victims and reported cases (Putt 2007, 3) however without being able to accurately predict the ratio between reported and unreported cases, it is extremely difficult to predict the full scope of the problem, even if reliable sampling could be achieved.

### **- Mischaracterisation of human trafficking**

In addition to the challenges researchers face in establishing samples that will help to accurately predict the total size of the problem, there are also concerns about the ways in which researchers draw conclusions about the nature of trafficking. Data on trafficking can become skewed due to both politicised data collection, and a primary focus on trafficking for sexual exploitation instead of all forms of forced labour. While the limitations on sampling typically suffer from an under-reporting of the crime of trafficking, the skewing of data can result in the over-reporting of certain types of trafficking, often resulting in the mischaracterisation of the nature of trafficking.

#### *Politicised data collection*

ILO researchers believe that the most reliable data is produced by national police forces in conjunction with service organisations and international agencies which come into direct contact with trafficking victims. However most domestic assessments of the problem are typically produced by ‘unofficial sources’ — academic researchers and non-government organisations (ILO 2006, 10). As demonstrated above, it is necessary to look beyond criminal justice data. This does not, however, guarantee more reliable and comprehensive information, as one of the weaknesses of relying on other sources is that many of the organisations producing data on trafficking victims are influenced by politics. The legitimacy of prostitution has been, and still is, the topic of much heated debate. Organisations that work with victims of trafficking and provide advice to decision-makers on policy are expected to have a position on the legitimacy of prostitution, especially in the United States where the Anti-Prostitution Pledge<sup>3</sup> has polarized the subject. Therefore, when NGOs collect and analyse data, there is a risk that political interests will influence outcomes. (Di Nicola, Orfano, Cauduro and Conci 2005). Ann Jordan, former Director of the Global Rights Initiative Against Human Trafficking, believes that the preferencing of abolitionist organisations

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<sup>3</sup> In 2002 the President of the United States introduced *National Security Presidential Directive 22* (more commonly known as the Anti-Prostitution Pledge), which restricts Government funding only to those groups who pledge that they will not use government funding to ‘promote prostitution’. The Directive states that, ‘Our [the US Federal Government’s] policy is based on an abolitionist approach to trafficking’ (*National Security Presidential Directive 22*, 16 December 2002).





to carry out research as a result of the Anti-Prostitution Pledge has led to the production of data that cannot be trusted. 'The fact is the US research [funding] has gone to all of these abolitionist folks and we know what the conclusions will be before it's even written' (Jordan interview 2008). Nina Vallins from Project Respect believes that the politicised nature of the debate over prostitution and trafficking will typically result in biased research. She says, 'It is a highly politicised field, which can certainly influence how questions are framed, how research is interpreted' (Vallins interview 2008).

The skewed data produced by some NGOs also occurs for reasons that are not political. Di Nicola argues that survey samples of trafficking victims often suffer from 'severe selection bias' because the nature of the service provided by the agency has an impact on the type of victims who use the service. 'If the sample is selected from, say, victims who come into contact with the judicial system during the prosecution of their traffickers, these victims will have specific characteristics reflecting the institutional view of the problem' (Di Nicola 2007, 59). Similarly, organisations that provide services only to a specific group of people will obviously only record data on that group. Kangaspunta (2007) argues that many cases of trafficking involving men for forced labour are overlooked in data collection because, 'Many victim support organisations provide services only for women and child victims. So it could be assumed that the number of male victims particularly trafficked for forced labour is under-estimated' (Kangaspunta 2007, 30).

This phenomenon of statistical data skewing towards the interests of service agencies is not new. Ronald Weitzer argued a decade ago that data on prostitution and related activities often offered only a sample of women who experienced the most exploitation and victimization in the industry because these were the women who most frequently came into contact with the police or contacted service agencies who recorded data (Weitzer 1999, 84). Due to the way in which the data is collected, it remains very difficult to produce a random sample of trafficking victims which can be accurately assumed to represent the population of trafficking victims.

Jordan also believes that much of the research on human trafficking is unreliable because the methodology for collecting the data cannot be replicated. She says, 'The only numbers I have any confidence in are the ILO's numbers in their forced labour report and the only reason I have any confidence in them is because they are quite explicit about their methodology. Somebody could go out and replicate it' (Jordan, interview, 2008). Melissa Ditmore from the New York Urban Justice Centre Sex Workers' Project agrees that there is a concern about the validity of research where the methodology is unclear (Ditmore interview 2008). She particularly calls into question research conducted by Melissa Farley (2004) which is relied upon as evidence by several abolitionist campaigners including Equality Now (Kirkland interview 2008), and the former Director of the TIP Office (Miller interview 2008).

The validity of research from NGOs has also been questioned in Australia. Janelle Fawkes from the Scarlet Alliance has questioned the research report presented by Project Respect during the Australian Parliamentary Inquiry. Project Respect's





'One trafficking victim is one too many' report (2004) estimated that there were at least 300 victims of trafficking for sexual servitude in Australia by asking interviewees to indicate how many people they knew who had been affected by trafficking. Fawkes says:

So those first people then referred to a group of people they thought might have been, or they knew who may have been affected by the issue ... So let's say that there were five people in that workplace and each one of those five people referred to knowing five people. Then that makes 25 people. So actually the methodology was flawed for this type of research. And a lot of researchers were saying that. But that research has gone on to inform policy in Australia.

(Fawkes interview 2008)

However, Scarlet Alliance also faces limitations on their ability to conduct research. Both organisations rely on the willingness of brothel managers and owners to grant access to sex workers in order to provide support services. This places an inevitable restriction on the extent of research into exploitation in the sex industry in Australia.

#### *Focus on sex trafficking*

One of the most common ways in which the data about human trafficking has become skewed is towards a focus only on trafficking for sexual exploitation versus trafficking for other forms of forced labour. While a focus on this terrible crime is certainly necessary, this often results in the skewing of data to over-represent the number of victims trafficked for prostitution. For example, Feingold (2005) argues that despite a great deal of public and political attention placed on trafficking for sexual exploitation, ILO estimates indicate that approximately only 10 per cent of the victims of forced labour in Asia are trafficked for prostitution (Feingold 2005, 26). The skewing of data has occurred for several reasons. Firstly, in many countries trafficking legislation deals exclusively with sexual exploitation (Kangaspunta 2007, 30) and anti-trafficking measures introduced by governments typically focus on sex trafficking and not forced labour (Phillips 2008, 11). In addition, nations often focus their efforts exclusively on addressing trafficking in women and children, and ignoring the trafficking of men for forced labour. Feingold (2005) notes that 'Men are excluded from the trafficking statistics gathered in Thailand because, according to its national law, men cannot qualify as trafficking victims' (Feingold 2005, 26). This legislation has now been altered to include men in the definition of a trafficking victim, however attitudinal change has been slow in many countries to recognise a wider group of people who are vulnerable to trafficking.

The possible over-representation of victims trafficked for sexual exploitation versus other forms of labour is also a result of an institutional focus on sex. Di Nicola (2007) argues that, 'it is above all trafficking in women and girls for sexual exploitation that has caught the interest of academia. This may be because international and national political debate and the media concentrate on this sector' (Di Nicola 2007, 52). This is further exacerbated through the distribution of government funding for services. Most governments have prioritised funding for victims of



trafficking for sexual exploitation (Di Nicola 2007, 66) over victims of trafficking for other forms of forced labour, resulting in a statistical representation that indicates the majority of victims are trafficked for prostitution.

The focus on sex trafficking versus other forms of labour was identified as a problem during the Australian Parliamentary Inquiry. The Scarlet Alliance questioned the validity of the Government's focus on sexual servitude over other forms of forced labour, arguing that laws to regulate the sex industry:

...single out one industry and target that one industry for the incidence of illegal migrant workers ... Sex servitude offences appear to single out sex work as an occupation where women are sexually exploited. Scarlet Alliance contends that in the context of sex work it is the labour of some sex workers which is exploited.

(*APJC Submission 27, 2003*)

## **Conclusion**

Over the years since the introduction of the United Nations Protocol on Trafficking legislators in Australia and the United States have been faced with the difficult task of quantifying the problem of human trafficking. In the context of all the challenges faced by researchers in establishing a clear picture of the problem of trafficking, it is not surprising that much ambiguity remains. This ambiguity emerges as a result of disputes over the definition of a 'smuggled' versus a 'trafficked person', and uncertainty surrounding the conflation of prostitution and trafficking within the UN Protocol's definition. The real size of the trafficking problem remains ambiguous as a result of the significant limitations on research due to the challenge of establishing a reliable sample of the population of trafficking victims. The nature of human trafficking also remains largely ambiguous due to the skewing of data as a result of the politicisation of research and a focus on trafficking for sexual exploitation versus other forms of forced labour.

This persistent ambiguity causes substantial problems for legislators, who inevitably make policy on the basis of unreliable or unsubstantiated information. Anne Gallagher, Advisor on Trafficking at the Office of the UN High Commissioner for Human Rights, warned the Australian Parliamentary Inquiry that the use of poor quality data was widespread in policy-making on trafficking. She argues that, 'Rather than acknowledging or confronting these inadequacies, much contemporary trafficking research unquestioningly accepts and promulgates unverified data' (*APJC Submission 23, 2003*). The unfortunate result of the ambiguity surrounding human trafficking data is most often the perpetuation of poorly researched, unrepresentative, or misleading statistics that fill the void left by researchers who are unwilling to make estimates or predictions based on research that is unreliable. Policy is then informed by flimsy estimates, drawn from unsubstantiated newspaper claims, or research that does not carefully articulate the definitions and methodology that inform the study.



Di Nicola argues that, 'Especially when taken from the media, research may be anecdotal or based on stereotypes, and the validity of sources may be difficult to control' (Di Nicola 2007, 54). Some organisations may even have an interest in supporting false statistics, even when they are aware that these estimates may have been exaggerated or inflated. Di Nicola suggests that this occurs because sometimes 'the main goal of those presenting these numbers is to feed figures to the press or to provide politicians with "inflated" figures, the purpose being to induce them to divert resources and to increase their efforts in the "war on trafficking"' (Di Nicola 2007, 61).

This perpetuation of false statistics is clearly evident in human trafficking debates. Figures mentioned in passing in hearings in the United States have become accepted as the truth until evidence failed to support them. There is agreement on both sides of the ideological divide that a deficit in research can lead to the perpetuation of false statistics. Raymond argues that, 'The lack of quantitative data and the enormous difficulties in producing accurate assessments of trafficking have resulted in many commentators repeating statistics from groups or governments that are often extrapolations from other crime contexts or unverified numbers' (Raymond 2002, 492). Jordan noted that even the United Nations relies on repeated statistics. 'There's some big UN number that was just somebody speaking at a UN conference and that became the UN numbers' (Jordan interview 2008). John Miller also agreed that despite 'thousands of articles' on the topic of trafficking, they 'mostly quote each other' and as a result 'in terms of the modern phenomenon [of slavery] I think we know less' (Miller interview 2008).

The use of misleading or unreliable data as the basis for legislation on human trafficking has the potential for damaging consequences. While the full impact of human trafficking legislation in Australia and the United States is yet to be measured, there are two potential harms that could, in particular, emerge from an over-focus on trafficking for sexual exploitation versus trafficking for other forms of labour. The possible over-representation of sex trafficking cases within the wider population of human trafficking may result, firstly, in policies that lead to the harassment and mistreatment of all migrant sex workers. Recently sex workers have reported negative experiences as a result of 'rescue raids' undertaken by non-government organisations operating under the banner of 'saving' trafficking victims. Busza (2004) reports that raids of this type in Cambodia forced women into custody where they later had to 'bride their way out' of either prison or forced rehabilitation centres before returning to sex work (Busza 2004, 243). In the United States efforts to address sex trafficking have veered towards a focus on the entire sex industry with the introduction of the *Trafficking Victims Protection Reauthorization Act 2005*. More commonly referred to as the 'End Demand Act', the legislation introduces measures designed to achieve a reduction in demand for commercial sex including increased funding to law enforcement to support raids on brothels (*Trafficking Victims Protection Reauthorization Act 2005*, 11).

A second possible outcome of the over-representation of trafficking for sexual exploitation may also be the limited focus on trafficking for other forms of labour



exploitation. As noted above, several nations still recognise only trafficking for sexual exploitation in their legislation, relegating trafficking into the agricultural, garment, manufacturing and domestic service industries as crimes associated with labour exploitation or people smuggling as separate offences. This could prevent researchers and legislators from gaining an accurate picture of the true nature of human trafficking.

As decision-makers continue to legislate to prevent trafficking, prosecute traffickers and protect victims of trafficking, it is essential that efforts are made to avoid basing legislation on information that is simply repeated rather than reliable.



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